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No. _____

In the Supreme Court of the United States

October Term, 1986

COMPTON COMMUNITY COLLEGE DISTRICT and BOARD OF TRUSTEES OF THE COMPTON COMMUNITY COLLEGE DISTRICT,

Petitioners,

v.

NORTHWESTERN NATIONAL CASUALTY COMPANY, and LANDMARK INSURANCE COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Questions Presented.

The declaratory relief action herein was brought in the United States District Court for the Central District of California under diversity of citizenship jurisdiction. The substantive law of the forum state, the State of California, shall be applied. (*Erie R. Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817 (1938); *St. Paul Fire & Marine Ins. Co. v. Weiner,* 606 F.2d 864, 867 (9th Cir. 1979).)

The questions presented for review are:

1. Whether the federal court of appeals disregarded the substantive law of the State of California governing the construction of the language of insuring agreements.

2. Whether the federal court of appeals disregarded Article XVI, Section 18, of the Constitution of the State of California, in ruling that the obligation to pay the teachers salary was imposed by a collective bargaining agreement with the teachers, and not by state statutes and law.

3. Whether the federal court of appeals failed to apply the ruling of the state court of appeal in *Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d 82, 211 Cal.Rptr. 231 (*Petition for Hearing* denied June 20, 1985) [hereinafter also referred to as the "State Action"], wherein the state court of appeal held that the obligation to pay the retroactive portion of a salary increase is a liability "imposed by law" upon the District and not the collective bargaining agreement.

4. Whether the federal court of appeals refused to follow the substantive law of the State of California when it determined that there was no errors and omissions coverage herein because the negligence of District employees which resulted in the District entering into the agreement for payment of the retroactive salary increase "was not a breach of a duty owed to the teachers."

5. Whether the federal court of appeals refused to follow the substantive law of the State of California when it determined that "even if the District did owe a duty to the

teachers, the teachers did not in fact assert an accounting error as a breach of duty, and therefore the District incurred no liability as a result of it," and, consequently, the errors and omission insurance does not apply.

The questions presented herein were raised in the federal court of appeals and the district court below.

Parties to the Proceeding Below.

All parties appear in the caption of the case in the United States Supreme Court.

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NORTHWESTERN NATIONAL CASUALTY COMPANY, and LANDMARK INSURANCE COMPANY,

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PETITION FOR WRIT OF CERTIORARI

Opinions Below.

The Memorandum of the United States Court of Appeals for the Ninth Circuit, filed October 17, 1986, is contained in Appendix A.

The Order of the United States Court of Appeals for the Ninth Circuit (hereinafter "federal court of appeals") denying petitioner's petition for rehearing, filed December 10, 1986, is contained in Appendix B.

The summary judgment of the United States District Court for the Central District of California (hereinafter "district court") granting summary judgment against petitioners on

the issue of coverage, entered November 14, 1985, is contained in Appendix C.

The REPORTER'S TRANSCRIPT OF PROCEEDINGS, dated November 4, 1986, which constitutes the district court's further findings of facts and conclusions of law and a statement of the district court's reasons for granting summary judgment against petitioners, is contained in Appendix D.

The judgments of the district court entering summary judgment against petitioners upon the whole case, entered November 20, 1986, and December 6, 1985, are contained in Appendix E.

Jurisdiction.

The Memorandum decree petitioner Compton Community College District seeks to have reviewed was filed October 17, 1986 [Appendix A].

Petitioner's petition for rehearing was denied by Order filed December 10, 1985 [Appendix B].

The jurisdiction of this Court is invoked under Section 1254(1) of Title 28 of the United States Code.

The grounds on which jurisdiction in this Court is invoked are set forth in Rule 17(a) of the Rules of the United States Supreme Court which provides in pertinent part that:

> "When a federal court of appeals . . . has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision."

Because the declaratory relief action was brought by respondent Northwestern National Casualty Company [hereinafter referred to as "Northwestern"] in the federal district court because of diversity of citizenship under Sections 2201 and 1332(a)(1) of Title 28 of the United States Code, the substantive law of the forum state — California — shall

apply. (*Erie R. Co. v. Tompkins,* 304 U.S. *supra; St. Paul Fire & Marine Ins. Co. v. Weiner,* 606 F.2d *supra* at 867.)

The federal court of appeals disregarded the law of the State of California, and in doing so, has so far departed from the accepted and usual course of judicial proceedings, as enunciated by this Court in *Erie R. Co. v. Tompkins,* 304 U.S. *supra,* and so far sanctioned such departure by the district court, that this Court need exercise its power of supervision.

Constitutional Provision and Statutes Involved.

Article XVI, Section 18, of the Constitution of the State of California provides in pertinent part:

> "No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year . . ."

The full text of Article XVI, Section 18, of the Constitution of the State of California is contained in Appendix F.

Section 1427 of the Civil Code of the State of California provides that:

> "An obligation is a legal duty, by which a person is bound to do or not to do a certain thing."

Section 1428 of the Civil Code of the State of California provides that:

> "An obligation arises either from:
>
> One. The contract of the parties; or,
> Two. The operation of law. An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding."

Statement of the Case.

1. On March 9, 1982, the Compton Community College Federation of Teachers, AFT Local 3486, AFL-CIO [hereinafter referred to as the "Federation of Teachers"] and the District signed a collective bargaining agreement which called for, *inter alia*, a retroactive wage increase payable in the 1981-82 fiscal year, retroactive to July 1, 1981.

2. On September 16, 1982, the Office of the Los Angeles County Superintendent of Schools blocked payment of the retroactive portion of the wage increase on grounds that the payments are prohibited by Article XVI, Section 18, of the California Constitution, because the District did not have sufficient income and revenues accruing to it in the 1981-82 fiscal year to make the retroactive salary payments.

3. In response, on October 7, 1982, the Federation of Teachers filed in the Superior Court for the County of Los Angeles, State of California, a petition for writ of mandate against the Los Angeles County Superintendent of Schools and the District to compel payment of the retroactive portion of the wage increase.

4. On November 9, 1983, the trial court in the State Action entered judgment denying the Federation of Teachers' petition for writ of mandate, holding that the payment was barred by Article XVI, Section 18, of the California State Constitution, because it was a debt "voluntarily incurred" pursuant to the collective bargaining agreement. The Federation of Teachers appealed the judgment.

5. On February 27, 1985, the Court of Appeal, Second Appellate District, State of California, reversed the trial court's decision and entered its decision in favor of the Federation of Teachers holding that the payment was not barred by Article XVI, Section 18, of the California State Constitution, because: " . . . the obligation to pay the retroactive raises is not a debt voluntarily incurred by the school district but one 'imposed by law.' " (*Compton*

Community College etc. Teachers v. Compton Community College Dist. (1985) 165 Cal.App.3d *supra* at 86-87.)

6. From December 5, 1981, through December 5, 1984, the District was insured by Northwestern for payment on behalf of the District of all sums which the District shall become obligated to pay by reason of the "liability imposed by law," and to pay on behalf of the District all sums which it shall become legally obligated to pay on account of any claim for breach of duty made against the District by reason of the occurrence of "any negligent act, error, or omission" of the District, its governing board, officers and employees acting within the scope of their duties.

7. From December 5, 1980, through December 5, 1981, the District was insured by respondent Landmark Insurance Company [hereinafter referred to as "Landmark"] for payment on behalf of the District of all sums which the District shall become legally obligated to pay on account of any claim for breach of duty made against the District by reason of the occurrence of "any negligent act, error, or omission" of the District, its governing board, officers and employees acting within the scope of their duties.

8. The judgment in the State Action is final and non-appealable by any party to the State Action.

9. On May 24, 1985, and before the decision in the State Action became final, Northwestern filed its Complaint for Declaratory Judgment herein, seeking a declaration of its rights and obligations, and those of Landmark, under their respective insuring agreements with the District to indemnify the District for the retroactive salary payment ordered in the State Action. Jurisdiction of the subject matter in the district court was invoked pursuant to Sections 2201 and 1332(a)(1) of Title 28 of the United States Code.

10. On or about July 22, 1985, the District served and filed its answer to Northwestern's first amended complaint with counterclaims against Northwestern and cross-claims against Landmark.

11. On or about October 11, 1985, Northwestern served and filed a motion for summary judgment against the District on the issue of coverage. On October 11, 1985, the District served and filed its motion for summary judgment against Northwestern and Landmark, and each of them, on the issue of coverage.

12. The cross-motions were heard by the district court on November 4, 1985. The district court found that there was no bona fide dispute of material facts, and found on the coverage issue that neither Northwestern nor Landmark is obligated to indemnify the District. On November 14, 1985, the district court entered judgment denying the motion of the District and granting the motion of Northwestern for summary judgment, holding *inter alia* that the obligation to make the payment was imposed upon the District by the collective bargaining agreement. Thereafter, pursuant to stipulation of the parties, the district court entered summary judgment upon the whole case.

13. On December 12, 1985, the District served and filed its Notice of Appeal. Jurisdiction was invoked in the court of appeals pursuant to Section 1291 of Title 28 of the United States Code.

14. By Memorandum filed October 17, 1986, the federal court of appeals affirmed the judgment of the district court.

15. Petitioner's petition for rehearing, filed on or about October 30, 1986, was denied on December 10, 1986.

Amplification of Reasons for Allowance of Writ.

In its Memorandum, the federal court of appeals acknowledges that the District's first claim arises under a general provision of the policy issued by Northwestern which requires Northwestern to pay

> "all sums which the insured shall become obligated to pay by reason of the liability imposed by law

> . . . for damages . . . sustained any by person or persons." [Memorandum at Appendix A2.]

Further, in its Memorandum, the federal court of appeals acknowledges that the District alleges coverage under identical and overlapping "errors and omissions" provisions of the policies issued by Northwestern and Landmark which cover

> "all sums which the insured shall become legally obligated to pay . . . on account of any claim for breach of duty made against the insured by reason of the occurrence of any negligent act, error, or omission of the insured." [Memorandum at Appendix A3.]

The federal court of appeals affirmed the judgment of the district court as follows:

1. With respect to the district court's rejection of the District's claim that the liability was imposed by law upon the District, in its Memorandum, the federal court of appeals determined that the District's liability arose out of the State Action.

The federal court of appeals determined that the collective bargaining agreement was the source of the teachers' claim against the District in the State Action because:

a. The teachers union's claims in the State Action were contract claims and not tort claims. [Memorandum at Appendix A2-A3.]

b. "The duty to employ teachers is not the source of the District's liability to the teachers union because it is not a duty that runs to the teachers. That duty runs instead to the citizens of the state." [Memorandum at Appendix A3.]

2. With respect to the district court's rejection of the District's claim that the liability was incurred by reason of District employee negligent acts, errors and omissions, the federal court of appeals determined that:

a. The "alleged negligence by the District employee was not a breach of a duty owed to the teachers." [Memorandum at Appendix A3-A4.]

b. "[E]ven if the District did owe a duty to the teachers, the teachers did not in fact assert the accounting error as a breach of duty, and therefore the District incurred no liability as a result of it." [Memorandum at Appendix A4.]

The federal court of appeals' Memorandum decree is in contravention of this Court's ruling in *Erie R. Co. v. Tompkins,* 304 U.S. *supra*, and has so far departed from accepted and usual course of judicial procedures, and has sanctioned such a departure by the lower court, as to call for an exercise of this Court's power of supervision for the following reasons:

1. The federal court of appeals and district court disregarded California law requiring that insurance agreements shall be construed strictly against the insured.

2. The federal court of appeals and district court disregarded Article XVI, Section 18, of the Constitution of the State of California, when it ruled that the obligation to make the retroactive salary payment was imposed by the collective bargaining agreement, and not state statutes and law.

3. The federal court of appeals failed to apply the ruling of the state court of appeal in the State Action, wherein the state court of appeal held that the obligation to make the retroactive salary payment herein is imposed upon the District by law, not contract. The decision of the state court of appeal is dispositive of that question herein.

4. The federal court of appeals and district court failed to apply California law in not finding that the breach of a duty "imposed by law" gives rise to tort liability.

Contrary to the holding of the federal court of appeals in its Memorandum at Appendix A3, the court in the State Action not only determined that the District had a duty to

employ teachers, but it also determined that the District had a duty to pay teachers' salaries. The source of the District's obligation to the teachers is the obligation imposed by law (tort), not contract.

5. In its Memorandum at Appendix A3-A4, the federal court of appeals failed to follow state law with respect to the coverage provided under "errors and omissions" insurance when it concluded that there was no errors and omissions coverage herein because the alleged negligence by the District "was not a breach of a duty owed to the teachers."

The proper inquiry, under California law, is not whether a District employee in the preparation of the budget owed a duty to the teachers or citizenry [see Memorandum at Appendix A3-A4], but rather whether the liability incurred by the District was the result of District employee negligent acts, errors, or omissions which occurred in the course of the District's business. (*Aitchison v. Founders Ins. Co.* (1958) 166 Cal.App.2d 432, 333 P.2d 178.)

Further, the Landmark and Northwestern policies expressly provided coverage to the District for liability resulting from any negligent act, error or omission of District employees.

6. In its Memorandum at Appendix A5, the federal court of appeals reasoned that "even if the District did owe a duty to the teachers, the teachers did not in fact assert the accounting error as a breach of duty, and therefore the District incurred no liability as a result of it."

The federal court of appeals disregarded the substantive law of the State of California holding that the third party (injured party) claim against the insured does not adjudicate the issue of coverage. In the subsequent action between the insured and its insurers, the insured is not precluded by the third party claim or action from raising coverage issues not raised by the third party. (*Gray v. Zurich Insurance Co.* (1966) 65 Cal.2d 263, 54 Cal.Rptr. 104; see *Aitchison v. Founders Ins. Co.* (1958) 166 Cal.App.2d *supra.*)

ARGUMENT

I.

IN THIS ACTION, THE FEDERAL COURTS ARE BOUND TO APPLY THE SUBSTANTIVE LAW OF THE STATE OF CALIFORNIA.

Northwestern brought the action herein pursuant to 28 U.S.C. §1332(a)(1). The substantive law of the forum state applies—in this case, the State of California. (*Erie R. Co. v. Tompkins,* 304 U.S. *supra*; *St. Paul Fire & Marine Ins. Co. v. Weiner,* 606 F.2d *supra* at 867.)

This Court held in *Erie R. Co. v. Tompkins,* 304 U.S. *supra* at 79 that:

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law."

II.

UNDER CALIFORNIA LAW, INSURANCE POLICIES SHALL BE STRICTLY CONSTRUED AGAINST THE INSURER.

In construing the language of the Northwestern and Landmark policies, the federal court of appeals and district court failed to apply the long-established principles of construction applicable to the interpretation of insurance policies delineated by the California Supreme Court. (See *Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d 800, 180 Cal.Rptr. 628, and *Continental Cas. Co. v. Phoenix Constr. Co.* (1956) 46 Cal.2d 423, 296 P.2d 801.)

Northwestern, in its Special Multi-Peril Policy, Section II of the insuring agreement entitled SPECIAL SCHOOL

PACKAGE POLICY, provided coverage to the District, in part, as follows:

> "Part I - To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed by law, or the liability of others assumed or retained under contract for damages, including death at any time resulting therefrom, sustained by any person or persons and for damages because of injury to or destruction of property of others, including the loss or use thereof."

In *Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d *supra*, and in *Continental Cas. Co. v. Phoenix Constr. Co.*, (1956) 46 Cal.2d *supra*, the California Supreme Court enumerates established principles applicable to the interpretation of insurance policies under California law as follows:

> 1. "Words used in an insurance policy are to be interpreted according to the plain meaning which a layman would ordinarily attach to them.
>
> * * *
>
> 2. "On the other hand, 'any ambiguity or uncertainty in an insurance policy is to be resolved against the insurer and . . . if semantically permissible, the contract will be given such construction as will fairly achieve its object of providing indemnity for the loss to which the insurance relates.' [Citations omitted.] The purpose of this canon of construction is to protect the insured's reasonable expectation of coverage in a situation which the insurer-draftsman controls the language of the policy. [Citations omitted.]" (*Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d *supra* at 807, 808.)
>
> 3. "If the insurer uses language which is uncertain any reasonable doubt will be resolved against it; if the doubt relates to extent or fact of coverage, whether as to the peril insured against [Citations

omitted]; . . . or the person or persons protected [Citations omitted], the language will be understood in its most inclusive sense, for the benefit of the insured." (*Continental Cas. Co. v. Phoenix Constr. Co.*, (1956) 46 Cal.2d *supra* at 437-438.)

4. "Its [the canon's] effect differs, depending on whether the language to be construed is found in a clause providing coverage or in one limiting coverage. 'Whereas coverage clauses are interpreted broadly so as to afford the greatest possible protection to the insured [citations], exclusionary clauses are interpreted narrowly against the insurer. [Citations.]' " (*Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d *supra* at 808.)

5. "As we have declared time and again, 'any exception to the performance of the basic underlying obligation must be so stated as to clearly apprise the insured of its effect' [citation]; thus, 'the burden rests upon the insurer to phrase exceptions and exclusions in clear and unmistakable language. [Citations.]' " (*Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d *supra* at 808.)

A. In construing the language of the Northwestern policy providing coverage for a liability "imposed by law," the federal court of appeals and district court failed to apply the "plain meaning" canon of construction.

Under California law, words used in an insurance policy are to be interpreted according to their plain meaning.

The language of the Northwestern policy clearly and unequivocally provides that Northwestern shall pay on behalf of the District all sums which the District shall become obligated to pay by reason of a liability "imposed by law."

The state court of appeal in the State Action expressly held that the obligation to pay the retroactive raises is "imposed by law."

The insuring agreement contains no exclusions or limitations regarding the kind or nature of the "liability imposed by law". The policy *does not* provide that Northwestern will pay all sums which the District shall become obligated by law to pay *except* wages, salaries or benefits arising therefrom.

Under California law, coverage clauses are interpreted broadly so as to afford the greatest possible protection to the insured (*Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d *supra* at 808). Any exception to the performance of the basic underlying obligation must be so stated as to clearly apprise the insured of its effect (*Gray v. Zurich Insurance Co.* (1966) 65 Cal.2d *supra* at 269); and must be construed strictly against the insurer and liberally in favor of the insured (*Crane v. State Farm Fire & Cas. Co.* (1971) 5 Cal.3d 112, 115-116, 95 Cal.Rptr. 513).

B. The federal court of appeals and district court failed to apply the rule of construction applicable when the meaning of a policy term is deemed ambiguous or uncertain.

If, however, as the district court reasoned, the words "liability imposed by law" are subject to more than one meaning, to wit: tort liability and constitutionally or statutorily imposed liability [Reporter's Transcript at Appendix D16-D17.], then the phrase "liability imposed by law" in the Northwestern insuring agreement is rendered ambiguous or uncertain.

Under California law,

> "If the insurer uses language which is uncertain any reasonable doubt will be resolved against it; if the doubt relates to extent or fact of coverage, . . . the language will be understood in its most

> inclusive sense, for the benefit of the insured." (*Continental Cas. Co. v. Phoenix Constr. Co.*, (1956) 46 Cal.2d *supra* at 437-438.)
>
> "An insurance policy is to be construed most favorably to the insured, in such manner as to provide full coverage of the indicated risk rather than to narrow the protection." (*Ritchie v. Anchor Casualty Company* (1955) 135 Cal.App.2d 245, 257, 286 P.2d 1000.)

Assuming *arguendo*, as the district court determined, that the term "liability imposed by law" is open to several meanings, Northwestern was required by state law to use the term "tort liability" and not the phrase "liability imposed by law" in order to narrow the scope of coverage.

If an insurer intends to exclude from coverage certain injuries (or in this case certain types of "liabilities imposed by law"), it must draft its policy in conspicuous, plain and clear, and unmistakable language (*State Farm Mut. Auto Ins. Co. v. Jacober* (1973) 10 Cal.3d 193, 197, 207, 110 Cal.Rptr. 953).

If doubt relates to the fact of coverage, the language will be understood in its most inclusive sense, for the benefit of the insured (*Continental Cas. Co. v. Phoenix Constr. Co.* (1956) 46 Cal.2d *supra* at 437-438).

Because Northwestern used a term which the district court determined has several meanings under state law, the district court was required under California law to construe Section II, Part I of the policy broadly to provide full coverage for the indicated risk rather than narrow the protection. (*Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d *supra* at 808.)

In *State Farm Mut. Auto Ins. Co. v. Jacober* (1973) 10 Cal.3d *supra* at 197, the California Supreme Court, in affirming the judgment against the insurer, held that:

> "As we explain, we have no occasion to determine which of the various proposed interpretations of

> the clause is the 'correct' one, for under settled principles so long as coverage is available under any reasonable interpretation of an ambiguous clause, the insurer cannot escape liability."

C. The breach of a civil duty imposed by statute gives rise to tort liability.

The court of appeal in the State Action held that the District's duty to make the retroactive wage increase arises not from a contract, but rather is imposed upon the District by the state constitution and statutes, including Article IX, Sections 1 and 5, Article XVI, Section 8, of the California Constitution, and California Education Code Sections 72290, 87211, 87274-87277 and 87289-87980. (*Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d *supra* at 92, 86-87.)

Even if we were to assume, as the district court held, that the Northwestern policy only provides coverage for "tort liability," nevertheless, under California law, the breach of a statutory duty gives rise to tort liability.

> "A tort, in contemplation of English law, consists in a violation of a duty imposed by the general law upon all persons occupying the relation which is involved in a given transaction or *res gestae*." (*Hallidie v. Enginger* (1917) 175 Cal. 505, 507, 166 P. 1.)

In *Coleman v. California Y. Meeting, etc.* (1938) 27 Cal.App.2d 579, 582, 81 P.2d 469, the court held that:

> "In order to constitute an actionable tort, there must be a legal duty—imposed by statute or otherwise—owing by the defendant to the one injured, for in the absence of such a duty any damage caused is injury without wrong—*damnum absque injuria*."

As the state appellate court held, the duty to make the retroactive wage increase herein was imposed by statute and arises *ex delicto*. The breach of that duty is a tort.

D. Northwestern's alteration of its rationale for asserting non-coverage required the federal court of appeals and district court to find the policy language was at best ambiguous.

Under state law, an insurer is required to assert its legal position reasonably and in good faith (see *Egan v. Mutual of Omaha* (1979) 24 Cal.3d 809, 169 Cal.Rptr. 691).

Under state law, an insurer cannot reasonably and in good faith deny payments to its insured without thoroughly investigating the foundation for its denial; the insurer also has a duty to provide the insured with a statement of the "basis relied on in the insurance policy, in relation to the facts or applicable law, for the denial of a claim." (*Egan v. Mutual of Omaha* (1979) 24 Cal.3d *supra* at 819; *Neal v. Farmers Insurance Exchange* (1978) 21 Cal.3d 910, 148 Cal.Rptr. 389; California Insurance Code Section 790.03(h)(13).)

Based on the alteration by Northwestern of its reasons for denying coverage alone, the district court and federal court of appeals were required under state law to deem Part I of Section II of the Northwestern policy at best "ambiguous or uncertain," and required to construe that policy provision in the broadest sense for the benefit of the District.

1. Northwestern's posture in 1984.

In January 1984, pursuant to the insuring agreement with the District, Northwestern agreed to provide a legal defense for the District in the State Action. Concurrently, Northwestern disclaimed coverage for the loss, and reserved its claim of non-coverage in its so-called "Reservation of Rights Letter," to the District, dated January 23, 1984.

In its "Reservation of Rights Letter," Northwestern set forth the coverage issues it states are present as a result of the State Action and reserved rights to disclaim coverage, as follows:

> "Based upon a review of the policy, the petition for writ of mandate [in the State Action] and other information you have provided, as well as a review of the applicable case and statutory law, we wish to explicitly set forth the coverage issues that are present as a result of this litigation.
>
> * * *
>
> "3. Serious questions exist as to whether you are afforded coverage under Section I [Part I] of the insuring agreement. It is wholly unclear as to whether, should the writ of mandate issue [in the State Action], you would be liable under the agreement as opposed to sums you are obligated to pay by reason of the liability imposed by law. Further, it is the position of Northwestern National Casualty Company that it is against public policy of the State of California to insure against the repudiation of a collective bargaining agreement."

In its letter, Northwestern did not deny coverage by asserting that the policy did not provide coverage for the payment of teacher salaries, or deny that a loss had occurred, but rather denied coverage based on its assertion that should the writ issue in the State Action, it is wholly unclear whether the District would be liable under the agreement or by reason of the liability imposed by law. State law required Northwestern to apprise the District of its bases for denying coverage in its "Reservation of Rights Letter."

2. Northwestern's posture in the district court.

In its Motion for Summary Judgment filed in the district court on October 11, 1985, Northwestern asserted non-coverage because the term liability imposed by law:

"has been judicially determined on more than one occasion, as requiring an insurer to indemnify for tort liabilities *only*.

3. Northwestern's posture on appeal.

On appeal, in Appellee's Brief, Northwestern represented for the first time that the policy itself clearly and unambiguously limits coverage to "bodily injury" or "property damage" only based on definitions contained in a section of its policy labeled "Conditions Applicable to Section II."

The effect of these provisions, Northwestern argued, is that the coverage provided under Section II, Special School Package Policy, in Part I (liability imposed by law coverage) and Part IV (employee errors and omissions coverage), is limited to bodily injury and property damage only.

The provisions of its policy, which Northwestern alleged clearly and unambiguously limit policy coverage to an "occurrence" (defined as an "accident") resulting in "bodily injury" or "property damage" only, are contained in a standardized printed section entitled "Conditions Applicable to Section II." These provisions are stamped "VOID" on the face of the policy and thereby rendered inapplicable to Section II, SPECIAL SCHOOL PACKAGE POLICY, of the insuring agreement.

Under the principles of construction announced by the California Supreme Court which provide that policy language must be given its plain and ordinary meaning, that any limitation on coverage must be clearly stated in the policy, and that terms which are ambiguous or uncertain must be construed in their broadest sense for the benefit of the insured, the district court and federal court of appeals failed to follow state law by finding that there was no coverage under Part I, Section II of the Northwestern policy.

III.

UNDER CALIFORNIA LAW, THE OBLIGATION TO PAY TEACHER SALARIES IS IMPOSED UPON THE DISTRICT BY LAW, NOT CONTRACT.

Under Article XVI, Section 18, of the California Constitution (hereinafter also referred to as the "debt limitation provision"), as interpreted by the California courts, the District could only be held liable to pay the retroactive wage increase upon a finding that the obligation was imposed upon the District by law, not contract. Otherwise, the state court of appeal in the State Action would have ruled that the payment was barred by the debt limitation provision of the state constitution.

In *Modesto I. Co. v. Modesto City School Dist.* (1931) 213 Cal. 410, 2 P.2d 387, the California Supreme Court held that the debt limitation provision of the state constitution barred enforcement of a contract made by the board of education for the purchase of real property for the school district because no funds were available from which the purchase price might be paid.

In *Goldsmith v. San Francisco* (1896) 115 Cal. 36, 46 P. 816, the California Supreme Court held that a claim on a contract to furnish supplies to prisoners in jail was within the debt limitation provision of the state constitution.

In *Pacific Undertakers v. Widber* (1896) 113 Cal. 201, 204-205, 45 P. 273, the California Supreme Court held that a city's obligation to pay plaintiff under its burial contract with the city is barred by the debt limitation provision of the state constitution. The city's duty to dispose of bodies of deceased persons under California Penal Code Section 292 was a general duty which is subject to the debt limitation provision because the city has discretion in the manner in which dead bodies are to be disposed.

Article XVI, Section 18, of the California State Constitution, provides in pertinent part that:

> "No county, city, town, township, board of education, or school district, *shall incur any indebtedness or liability in any manner or for any purpose* exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, ..." [Emphasis added.]

The purpose of the debt limitation provision of the state constitution is to avoid the snowball effect of increasing floating indebtedness into succeeding years until the burden becomes almost unbearable on the taxpayer (*McBean v. City of Fresno* (1896) 112 Cal.159, 44 P. 358).

It is not disputed that the District did not have sufficient income and revenue accruing to the District in the 1981-82 fiscal year to make the retroactive payment.

A. Obligations imposed by law are not an indebtedness barred by Article XVI, Section 18, of the California Constitution.

In *County of Los Angeles v. Byram* (1951) 36 Cal.2d 694, 698, 227 P.2d 4, the California Supreme Court held that "[a]n obligation imposed by law upon a city or county [or school district] is not an indebtedness within the meaning of the debt limitation provision" of the state constitution.

In *Wright v. Compton Unified School District* (1975) 46 Cal.App.3d 177, 183, 120 Cal.Rptr. 115, the state court of appeal held that because Government Code Section 995 expressly imposed upon a school district the specific duty to provide a legal defense for its employees to civil actions, the obligation represented by the contract, being one imposed upon the district by law, was not subject to the debt limitation provision.

Absent a finding that the obligation to make the retroactive salary increase was imposed upon the District by law, the debt limitation provision of the state constitution would have barred payment of the retroactive wage increase herein.

The federal court of appeals and district court failed to follow state law and the decision of the state court of appeal in the State Action.

B. The state court's ruling that the obligation to pay the teachers salaries was not based on the collective bargaining agreement is dispositive of that question herein.

The federal court of appeals in finding that "[a]lthough the District had a mandatory duty 'imposed by law' to employee teachers, the specific liability to the teachers does not arise directly from that duty"[Memorandum at Appendix A3.], ignored the holding of the state appellate court in the State Action.

The court of appeal in the State Action determined that the retroactive payment itself was not "voluntarily incurred," but imposed by law.

The court in *Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d *supra* at 92-93, found a specific legal duty to employ and to pay the teachers as follows:

> "The duty begins with the California Constitution which makes education one of the highest priorities of state and local government. [Citations omitted.] Education Code Section 72290 requires each district to employ and assign instructors and other personnel [and establish salaries not inconsistent with the laws of this state]. Nor is a district free to hire anyone it wants as instructors. Sections 87211, 87274-87277 and 87278-87290 describe the qualifications and certification required of persons a District employs to educate

its students. Government Code section 3543.2 makes the duty even more specific. It requires community college districts to set salary schedules after engaging in good faith bargaining about 'wages, hours of employment, and other terms and conditions of employment.' [Citation omitted.]

"Thus, the Compton College District had a specific duty to employ the teachers needed to provide education to its citizens and to pay them according to a set salary schedule."

The court of appeal in the State Action also held that:

"These legal duties mean the obligation to pay the retroactive raises is not a debt voluntarily incurred by the school district but one 'imposed by law.' " (*Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d *supra* at 86-87.)

Under California law, an obligation arises either by contract or operation of law.

California Civil Code Section 1427 provides that:

"An obligation is a legal duty, by which a person is bound to do or not to do a certain thing."

California Civil Code Section 1428 provides that:

"An obligation arises either from: One. The contract of the parties; or, Two. The operation of law. An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding."

A contract is an agreement between parties setting forth rights and obligation which are voluntarily incurred. California Civil Code Section 1549 provides that:

"A contract is an agreement to do or not to do a certain thing."

The term "operation of law" is defined in Black's Law Dictionary, Fourth Edition, as follows:

> "This term expresses the manner in which rights, and sometimes liabilities, devolve upon a person by the mere application to the particular transaction of the established rules of law, without the act or cooperation of the party himself."

The state court concluded that Article XVI, Section 18, of the California Constitution, does not bar the salary payment because it was an obligation not voluntarily incurred but rather imposed by law. (*Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d *supra* at 93-94.)

The determination in the State Action that the obligation to pay teacher salaries is "imposed by law," not contract, is dispositive of that issue herein. The federal courts are bound to follow the substantive law of the forum state.

IV.

LANDMARK AND NORTHWESTERN EXTENDED COVERAGE TO THE DISTRICT FOR NEGLIGENT ACTS, ERRORS, AND OMISSIONS OF DISTRICT EMPLOYEES.

The district court did not find that there was no negligence on the part of District officers and employees, but rather that employee negligence was not covered under either the Northwestern or Landmark policy. [Reporter's Transcript at Appendix D13.]

This finding is clearly contrary to the evidence. Both the Northwestern and Landmark policies expressly provide coverage for District employee "errors and omissions." (See policy provisions cited herein below.)

The very purpose for which the District purchased the "errors and omissions" insurance was to insure against the "errors and omissions" of District officers and employees.

Under Section II, entitled SCHOOL DISTRICT PROFESSIONAL LIABILITY INSURANCE, of the Landmark policy, Landmark provided liability coverage to the District as follows:

> "I. INSURANCE AGREEMENT.
>
> The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay . . . on account of any claim for breach of duty made against the insured by reason of the occurrence of any negligent act, error, or omission of the insured if such negligent act, error or omission is committed during the policy period and is discovered during the policy period or within thirty six (36) months after termination of the policy."

Under Section II, entitled SPECIAL SCHOOL PACKAGE POLICY, Part IV of the Northwestern policy, Northwestern provided liability coverage to the District as follows:

> "Part IV - To pay on behalf of the insured all sums which the insured shall become legally obligated to pay . . . on account of any claim for breach of duty made against the insured by reason of the occurrence of any negligent act, error, omission of the insured if such negligenct act, error or omission is committed during the policy period."

V.

THE "ERRORS AND OMISSIONS" INSURANCE PROVIDES COVERAGE FOR LIABILITIES WHICH RESULT FROM THE NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF THE INSURED, AND ITS EMPLOYEES, ACTING IN THE SCOPE AND COURSE OF THEIR EMPLOYMENT.

The federal court of appeals and district court misapprehended state law with respect to the coverage provided under

"errors and omissions" insurance when they concluded that there was no errors and omissions coverage herein because of the alleged negligence by the District.

The federal court of appeals found that:

> "The duty to use reasonable care when preparing its own budget is not a duty that the District owed to the teachers. Conceivably, the alleged error breaches a duty owed by the District employee to the District, or a duty that the District owed itself — a duty to reasonably manage its own affairs — or perhaps a duty owed to the District's constituents, the citizens of the state. It does not, however, breach a duty to the teachers." [Memorandum at Appendix A3-A4.]

The district court found that:

> "In my view, it simply defies good sense and logic. It defies good sense and logic to say that the insurance company must pay for that internal negligence, even if it was negligence." [Reporter's Transcript at Appendix D13.]

Under California law, the inquiry is not whether the insured's employee owed a duty to the injured party, but rather whether the liability incurred by the insured was the result of insured's employee errors and omissions which occurred in the course of the insured's business. (See *Aitchison v. Founders Ins. Co.* (1958) 166 Cal.App.2d *supra* at 437-439.)

Both the Landmark and Northwestern errors and omissions provisions expressly provided coverage whenever liability resulted from any negligent act, error, or omission of District elected board members, officers, and employees in the scope of their employment.

The District personnel covered under the Landmark policy are:

> "It is agreed that with respect to the operation of any college or school by or on behalf of the named insured:
>
> 1. Additional insured: The 'Persons Insured' provision is amended to include as an insured any of the following while acting within the scope of his duties as such: (a) If the named insured is a . . . educational institution, any trustee or member of the Board of Governors thereof. . . . (c) . . . any member of the teaching or adminstrative staff or other employee of the named insured."

The District personnel covered under the Northwestern policy are:

> "DEFINITIONS
>
> (A) The unqualified word 'insured' includes: 1. The named insured; 2. The following additional insureds individually and collectively, when acting solely within the scope of their office or employment for the named insured: (A) Members of the governing board, (B) Officers, (C) Employees; 3. Student body organizations under jurisdiction of the governing board but only while under supervision required by the governing board; (4) Volunteers, when acting solely within the scope of their duties as such."

The federal court of appeals and district court ignored state law and the express provisions of both policies in finding that the "errors and omissions" provisions did not cover internal employee negligence which resulted in the District agreeing to make the retroactive salary payment.

District employee "errors and omissions" are a substantial factor which caused the District to commit to the retroactive wage increase.

The district court's finding that District employee errors and omissions were "not the proximate cause of the liability

which the District undertook" [Reporter's Transcript at Appendix D14] is contrary to the evidence and law.

The district court's finding that "[t]he liability comes from a separate and conscious decision of the trustees to sign the contract"[Reporter's Transcript at Appendix D14] is contrary to the evidence because (1) the evidence before the district court was that but for District employee "errors and omissions" in preparing the budget, and but for the District's honest but mistaken belief that it had sufficient incomes and revenues available, the District would not have made a commitment to make the retroactive salary payment, and (2) it is foreseeable that a school district will expend income and revenues which it believes are available for educational purposes.

The uncontroverted evidence before the district court was that had the District Superintendent/President, Dr. Abel B. Sykes Jr., or the District Vice President of Business Affairs, Mrs. Jean S. Larson, known of District employee accounting errors and omissions made in the preparation of the District's 1981-82 budget which resulted in District income and revenues being mistakenly inflated by $408,353.00, the District would not have committed to making the retroactive wage increase. [Appendix A3, D9, D13.]

Under state law, the chain of causation remains unbroken unless, subsequent to the negligent conduct, an independent intervening force actively operates to produce the injury. The independent intervening force must be highly unusual or extraordinary, and hence not foreseeable, in order to be a superseding cause. (See, e.g., *Merrill v. Los Angeles G. & E. Co.* (1910) 158 Cal. 499, 504, 111 P. 534.)

However, where the negligent conduct is the stimulus for some other act or force which then causes the harm, there is no break in the chain of causation. The intervening force which is the normal reaction to the negligent conduct is characterized as a "normal intervening force," and it is not

a superseding cause. (See *Workman v. Howard Zink Corp.* (1950) 97 Cal.App.2d 418, 425, 218 P.2d 43.)

Even if we were to assume that the signing of the contract was a substantial cause, under California law, when a harm could have been caused by two or more causes,

> "The proper rule for such situations is that the defendants' conduct is a cause of the event as it is a material element and a substantial factor in bringing it about." (*Thomsen v. Rexall Drug & Chemical Co.* (1965) 235 Cal.App.2d 775, 783, 45 Cal.Rptr. 642.)

District employee "errors and omissions" were a substantial factor, and consequently, the legal cause of the harm.

Both Northwestern and Landmark are obligated to indemnify the District under the "errors and omissions" provisions of their respective polices with the District for the payment of the retroactive increase as a matter of law.

VI.

UNDER CALIFORNIA LAW, THE INSURED'S CLAIM AGAINST THE INSURER IS NOT LIMITED BY THE CLAIM OF THE INJURED (THIRD) PARTY.

In its Memorandum at Appendix A4, the federal court of appeals held that

> "even if the District did owe a duty to the teachers, the teachers did not assert the accounting error as a breach of duty, [in the State Action] and therefore the District incurred no liability as a result of it. . . . Because no one has made a 'claim for breach of duty . . . by reason of the occurrence of any negligent act, error, or omission of the insured,' the errors or omission insurance does not apply."

The holding of the federal court of appeals is contrary to state law.

Although the Federation of Teachers did not claim in the State Action that the District was liable to it based on District employee errors or omissions, in the subsequent action between the District and its insurers, the District is not precluded by the third party action (the State Action) from raising coverage issues against Northwestern or Landmark not raised in the third party action. (*Gray v. Zurich Insurance Co.* (1966) 65 Cal.2d *supra.*)

The insurer argued in *Gray v. Zurich* (1966) 65 Cal.2d *supra* at 278-279, that the requirement that the insurer provide a defense for the insured in a third party action embroils it in a conflict of interests in that the insurer's interests require the insurer to seek to establish in the third party action either (1) that there is no liability or (2) that such liability was outside the policy coverage, while the insured's interests require the insurer to seek to establish in the third party action either (1) that there is no liability or (2) that such liability was within the policy coverage.

In resolving the potential conflict, the California Supreme Court held in *Gray v. Zurich* at 276, 279:

> "Defendant [insurance company] cannot construct a formal fortress of the third party's pleadings and retreat behind its walls. . . . In light of the likely overstatement of the complaint and of the plasticity of modern pleading, we should hardly designate the third party as the arbiter of the policy's coverage.
>
> * * *
>
> "Since, however, the court in the third party's suit [against an insured] does not adjudicate the issue of coverage, the insurer's argument collapses. The only question litigated there is the insured's liability. The alleged victim does not concern himself with the theory of liability; he desires only

> the largest possible judgment. Similarly, the insured and the insurer seek only to avoid, or at least minimize, the judgment. As we have noted, modern procedural rules focus on whether, on a given set of facts, the plaintiff, regardless of the theory, may recover.
>
> * * *
>
> "In any event, if the insurer adequately reserves its right to assert the noncoverage defense later, it will not be bound by the judgment. If the third party prevails, that party or the insured will assert his claim against the insurer. [Footnote omitted.]"

Under state law, the District is not precluded by the claims of the Federation of Teachers in the State Action from raising coverage issues herein against its insurers Northwestern and Landmark.

CONCLUSION

For the foregoing reasons, the Compton Community College District and Board of Trustees of the Compton Community College District respectfully submit that this petition for writ of certiorari should be granted.

Respectfully submitted,

URREA C. JONES, JR.,
JONES & MATSON

Attorneys for Petitioners
COMPTON COMMUNITY COLLEGE DISTRICT and
BOARD OF TRUSTEES OF THE COMPTON
COMMUNITY COLLEGE DISTRICT

APPENDIX

A1 **Not For Publication**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NORTHWESTERN NATIONAL CASUALTY COMPANY,
Plaintiff-Appellee,

vs

COMPTON COMMUNITY COLLEGE DISTRICT, and BOARD OF TRUSTEES OF COMPTON COMMUNITY COLLEGE DISTRICT,
Defendants-Appellants,

-vs-

LANDMARK INSURANCE COMPANY,
Defendant-Appellee.

No. 85-6617

D.C. No. CV-85-3531-IH

MEMORANDUM

FILED

OCT 17 1986

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court
for the Central District of California
Irving Hill, District Judge, Presiding
Argued and Submitted September 5, 1986
Pasadena, California

Before: WALLACE, BOOCHEVER, and KOZINSKI, Circuit Judges.

Compton Community College District (District) appeals from a summary judgment entered in the district court in favor of Northwestern National Casualty Company (Northwestern) and Landmark Insurance Company (Landmark) involving a question of the coverage of insurance policies. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo both the granting of summary judgment and the interpretation of an insurance contract. *See Hanson v. Prudential Insurance Co.*, 772 F.2d 580, 582 (9th Cir. 1985). We affirm.

APPENDIX A

The District's first claim arises under a general liability policy issued by Northwestern. Section II, Part I of the policy requires Northwestern to pay "all sums which the insured shall become obligated to pay by reason of the liability imposed by law . . . for damages . . . sustained by any person or persons." The District does not quarrel with the district court's holding that the insurance policy does not cover liability for damages awarded in a contract case. *See, e.g., International Surplus Lines Insurance Co. v. Devonshire Coverage Corp.*, 93 Cal. App. 3d 601, 611 (1979). Therefore, resolution of this first issue depends on whether the district court correctly found that the District's liability resulted from a contract claim rather than from a tort claim.

The District's liability arose out of a petition for writ of mandate brought in state court by the teachers union. The petition alleged two grounds for overturning the District's contention that certain retroactive salary increases were barred by a state constitutional provision. First, the union alleged that the salary payments were owed under the terms of their collective bargaining agreement. Second, it argued that, as a matter of state law, the District had a duty not to reduce salaries during the school year. In its opinion, the state court of appeal articulated a third possible ground for rejecting the District's contention: that state law imposes a duty on the District to employ teachers and negotiate a set salary schedule. *Compton Community College Federation of Teachers v. Compton Community College District*, 165 Cal. App. 3d 82, 92-93 (1985) (*Compton*). The state court of appeal held that the duties stated in these last two grounds exempted the District from a state constitutional ban on deficit spending and therefore that the District had to pay the agreed upon salary increases.

The petition for writ of mandate's first ground is clearly a contract claim based on the collective bargaining agreement. The second ground — the duty not to reduce salaries — is also a contractual duty that derives from the same collective bargaining agreement. *See City and County of San Francisco*

v. Cooper, 13 Cal. 3d 898, 930 n.18 (1975). The third ground gives rise to neither contract nor tort liability. The duty to employ teachers is not the source of the District's liability to the teachers union because it is not a duty that runs to the teachers. That duty runs instead to the citizens of the state. *See Compton*, 165 Cal. App. 3d at 93-94.

The District relies heavily on the state court of appeal holding that the District's duties were sufficient to defeat the state constitutional provision because the District's obligation was "Imposed by law." *Id.* at 86-87. This state court ruling does not mean that the District's liability to the union was in tort rather than contract. Although the District had a mandatory duty "imposed by law" to employ teachers, the specific liability to the teachers does not arise directly from that duty. *See id.* at 94 (stating that the District "had discretion to negotiate whatever compensation levels it wanted to" to discharge its duty). The District satisfied this duty by voluntarily negotiating with the union and assenting to a collective bargaining agreement. That agreement — a contract — is the source of the teachers' claim against the District.

The District also alleges coverage under Part IV of Section II of its general liability policy with Northwestern and under an indentical provision of an overlapping policy with Landmark. Those policies cover "all sums which the insured shall become legally obligated to pay . . . on account of any claim for breach of duty made against the insured by reason of the occurrence of any negligent act, error, or omission of the insured." A District employee negligently failed to include $408,353 in expenditures when preparing the District's final budget and this omission allegedly caused the District to incur its obligation to the teachers. The District therefore argues that its insurers are liable under the "errors or omissions" provisions.

The district court reasoned in part that the alleged negligence by the District employee was not a breach of a duty owed to the teachers. We agree. The duty to use

reasonable care when preparing its own budget is not a duty that the District owed to the teachers. Conceivably, the alleged error breaches a duty owed by the District employee to the District, or a duty that the District owed itself — a duty reasonably to manage its own affairs — or perhaps a duty owed to the District's constituents, the citizens of the state. It does not, however, breach a duty to the teachers. Moreover, even if the District did owe this duty to the teachers, the teachers did not in fact assert the accounting error as a breach of duty, and therefore the District incurred no liability as a result of it. Neither the teachers nor anyone else has made a claim against the District based on the alleged negligent accounting. Because no one has made a "claim for breach of duty . . . by reason of the occurrence of any negligent act, error, or omission of the insured," the errors or omissions insurance does not apply.

The other issues raised do not merit comment.

AFFIRMED.

Note: This disposition is not appropriate for publication and may not be cited to or by the Courts of this Circuit except as provided by Ninth Circuit Rule 21.

FILED
DEC 10 1986
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NORTHWESTERN NATIONAL CASUALTY COMPANY, Plaintiff-Appellee, -vs- COMPTON COMMUNITY COLLEGE DISTRICT, and BOARD OF TRUSTEES OF COMPTON COMMUNITY COLLEGE DISTRICT, Defendants-Appellants, -vs- LANDMARK INSURANCE COMPANY, Defendant-Appellee.	No. 85-6617 D.C. No. CV-85-3531-IH

ORDER

Appeal from the United States District Court
for the Central District of California

Before: WALLACE, BOOCHEVER, and KOZINSKI, Circuit Judges.

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied, and the suggestion for rehearing en banc is rejected.

APPENDIX B

NOV 14 1985
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
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FILED
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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NORTHWESTERN NATIONAL CASUALTY COMPANY, Plaintiff,	No. CV85-3531-IH
v.	SUMMARY JUDGMENT—DENIAL OF DEFENDANTS' MOTION AND GRANTING OF PLAINTIFF'S MOTION
COMPTON COMMUNITY COLLEGE DISTRICT, et al., Defendants.	

There came before the Court for hearing Monday, November 4, 1985, the summary judgment motion of Plaintiff Northwestern National Casualty Company filed October 11, 1985; and the summary judgment motion of Defendants Compton Community College District and Compton Community College Board of Trustees filed October 11, 1985. Appearances were: For Plaintiff, Haight, Dickson, Brown & Bonesteel by Michael J. Leahy, Esq.; for Defendant, Cross-complainant and Counterclaimant College and Trustees, Jones & Matson by Urrea C. Jones, Jr., Esq.; for Defendant Compton Community College Federation of Teachers, Lawrence Rosenweig, Esq.; and for Defendant and Cross-defendant Landmark Insurance Co., Lynberg & Nelson by Judith Gold, Esq.

Counsel for all parties agreed in open Court that as to the issue of coverage under both Northwestern's and Landmark's insurance policies, the matter was ripe for final judgment at this time.

The Court, having heard argument and having considered the points and authorities, evidence and other documents filed in support thereof and in opposition to the said motions, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

APPENDIX C

1. There is no bona fide dispute of material fact. Plaintiff has showwn entitlement to the summary judgment prayed for in its motion as a matter of law. Defendants' motion for summary judgment is denied as to both Northwestern and Landmark. The College and the Board of Trustees have not shown entitlement to judgment as a matter of law as against either Northwestern or Landmark.

2. The Court declares that Plaintiff Northwestern National Casualty Company is not obligated under its policy of insurance (Exhibit 1 to the Stipulation of Facts filed October 4, 1985) to indemnify either the Compton Community College District or the Compton Community College Board of Trustees for the liability to the Compton Community College Federation of Teachers which was adjudicated to exist by final judgment of the California Court of Appeals in the case of *Compton Community College Federation of Teachers v. Compton Community College District*, 165 Cal. App. 3d 82 (1985).

2. As of November 4, 1985, Plaintiff Northwestern National Casualty Company has no further duty to defend or pay for the defense of its insured in any further proceedings in the said state court case of *Compton Community College Federation of Teachers v. Compton Community College District.*

3. Plaintiff shall have costs of $ _____.

4. A transcript of the proceedings held in open Court on November 4, 1985, is ORDERED filed when produced. It shall constitute the Court's further findings of fact and conclusions of law and a statement of the Court's reasons.

5. The Clerk shall transmit a copy of this Order by U.S. mail to all counsel of record.

DATED: November 8, 1985.

IRVING HILL, Judge
United States District Court

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

— — —

HONORABLE IRVING HILL,
SENIOR JUDGE PRESIDING

— — —

NORTHWESTERN NATIONAL CASUALTY COMPANY,	)	
Plaintiffs,	)	No. CV85-3531-IH
vs.	)	
COMPTON COMMUNITY COLLEGE DISTRICT; BOARD OF TRUSTEES OF COMPTON COMMUNITY COLLEGE DISTRICT, et al.,	)	
Defendants.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, November 4, 1985

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LOS ANGELES, CALIFORNIA;
MONDAY, NOVEMBER 4, 1985; 11:45 A.M.

THE CLERK: Item No. 10 on the calendar, Northwestern National Casualty Company vs. Compton Community College District, et al.

Counsel, please state your appearances.

MR. LEAHY: Michael Leahy for plaintiff.

MR. GOLD: Judith Gold for defendant Landmark Insurance Company.

MR. JONES: Urrea Jones for Compton Community College District.

MR. ROSENZWEIG: Lawrence Rosenzweig for the Compton Community College Federation of Teachers.

THE COURT: Just one second. I have a matter involving a possible contempt of court. Your matter is going to take a while. It proceeds from a stack of papers a foot and a half high, and it is pretty complex.

(Other court matters.)

THE COURT: Have we finished the appearances? I think we did. We have Miss Gold and Messrs. Jones and Rosenzweig and Mr. Leahy for the plaintiff's side, and are you —

MS. GOLD: Your Honor, I'm Judith Gold. I believe I'm more aligned with Northwestern. I think I'm aligned philosophically with Northwestern.

THE COURT: This is a declaratory relief action brought by an insurance company against its insured, the Compton Community College District, and the Board of Trustees of that district. Plaintiff also joined as defendant the Federation of Teachers, because the insured is making the claim that a liability which the State Courts have imposed or declared that it has two members of that Federation of Teachers is covered by the policy. That's a long sentence, but what I am saying is that the Federation of Teachers is joined because they make a claim against the insured which the insured says is covered by the policy.

The Federation of Teachers, as I get it, is still in the case, but they are almost bystanders in the case. Apparently the Federation is confident that the final judgment obtained against the District in the State Court is going to get paid — their claims are going to be paid — whether or not this policy covers the claims.

MR. ROSENZWEIG: That's correct.

THE COURT: As I understand it, Mr. Rosenzweig, you take no position to the Court on the motion before me today. Am I right?

MR. ROSENZWEIG: That's right. We filed a Notice of Non-Opposition to all the motions.

THE COURT: That really means you take no position?

MR. ROSENZWEIG: That is correct, and I don't intend to argue.

THE COURT: We have the following defendants in this case: The Community College District, the Board of Trustees thereof, the Federation of Teachers and Landmark Insurance Company.

I want to save for the moment and put aside the position of Landmark with respect to today's motions. I will certainly return to that matter.

I want to state now the nature of the motions and the positions of the parties. Leaving Landmark aside, we have mutual summary judgment motions. Plaintiff has brought a motion seeking that I declare that their policy does not cover the teachers' claim against the District.

The defendants, against whom that motion is asserted, are the District, the Trustees, and the teachers.

I have to ask Mr. Leahy if his motion is in any way directed against Landmark as to whether your policy covers.

MR. LEAHY: No sir.

THE COURT: All right. I did not think that you were asserting any rights against Landmark with respect to the coverage question. What you are asserting against Landmark is a kind of separate claim; namely, if your policy covers the teachers' claims, you think Landmark, another insurance company, had a policy prior to yours which, as between the

two companies, would impose on Landmark some or all of your burden. That's your position?

MR. LEAHY: That's correct, your Honor.

THE COURT: That would be a separate subject for separate summary judgment motion and it would become necessary only if this Court decides that the plaintiffs' policy covers the claim in question. So I'm going to proceed on the assumption that today's motion and proceedings, insofar as plaintiff's motion is concerned, will not adjudicate any rights as between plaintiff Northwestern and co-defendant Landmark.

We have a little different situation, though, when we come to the summary judgment motion of defendants; namely, the District and the Trustees. Those two defendants jointly filed their own summary judgment motion under filing date of October 11.

As I read their motion, they seek relief under their motion against both plaintiff Northwestern National and co-defendant Landmark. These two defendants have filed a third-party complaint against Landmark. They counterclaim against Northwestern National.

Am I not right about the scope of your motion?

MR. JONES: Yes, your Honor.

THE COURT: It appears that Landmark's policy covering the District was in effect and covered the period 12-5-80 to 12-5-81, one year, and that Northwestern's policy took effect from 12-5-81 to 12-5-84.

The Board and the District contend that the event covered by these policies occurred within that total period of 12-5-80 to 12-5-84. They seem to be claiming that both insurance companies are obligated to indemnify them fully.

So that District and the Board in their motion seek to have me declare that both companies and each of them are obligated to indemnity them for the liability that the State Court has declared exists as to the teachers.

That's in effect what you are asking me, isn't it?

MR. JONES: Yes, your Honor.

THE COURT: All right.

Now, I don't understand — and I'm addressing all counsel about this — that there is involved in today's motions any matter involving the cost of defending the case brought against the District and Trustees by the teachers. I don't know for sure which insurance company paid for that defense or if it was both. Apparently Northwestern paid for all of it.

Am I right about that?

MR. LEAHY: Yes, your Honor. Northwestern does not seek from this Court a ruling that —

THE COURT: Come to the podium. I am having a little trouble hearing you.

MR. LEAHY: Northwestern does not seek a ruling from the Court that it is entitled to any money paid to the District, but does represent to the Court that it has no further duty to defend.

THE COURT: We will get to that. I don't have any question before me about Northwestern asserting any claim for contribution against Landmark for those defense costs, right?

MR. LEAHY: That's correct, your Honor.

THE COURT: All right.

As I get it, Northwestern has abjured seeking to recover back from the District the cost of defending the teachers' case already expended.

MR. LEAHY: That is correct, your Honor.

THE COURT: And as I gather, Landmark will not be seeking that either, right? Even if they are held to have to contribute?

MS. GOLD: That's correct, your Honor.

THE COURT: Thus having cleared away some of the underbrush, the essential question to be decided today is whether the policies of the two insurance companies involved or either policy covered the liability to the teachers as imposed by the State Court judgment. The policies of the two companies are slightly different.

The District and the Trustees, as against Northwestern, rely on the portion of the large multi-peril policy, which is

headed "Special School Package Policy." The whole policy, of course, is before the Court. It is included in a stipulation of facts filed October 4th, 1985.

As to Northwestern, the District and the Trustees rely on two sections, which are both under the heading — and I'm quoting — "Section II."

The first of these sections is called Part One, and it obligates the company — and I'm not quoting exactly — to pay on behalf of the insured — and I think I'm quoting now — "all sums which the insured shall become liable to pay by reason of the liability imposed by law, or the liability of others assumed or retained under contract for damages, including death resulting therefrom sustained by any person and for damages because of injury or destruction of property of others."

Now, I recited all the language, but I think the only portion of that part one which is significant is the language which talks about an obligation that the insured has — and I'm quoting again — "become obligated to pay by reason of the liability imposed by law."

In the Northwestern policy, reliance is also placed on Part IV of Section II. Part IV obligates the company to pay on behalf of the insured "all sums which the insured shall become legally obligated to pay (insofar as coverage is not afforded under Parts I, II, or III) on account of any claim for breach of duty made against the insured by reason of the occurrence of any negligent act, error or omission of the insured."

The District and the Trustees claim, first of all, that their obligation to the teachers is an obligation covered by Part I, as a "liability imposed by law."

Secondarily, they say even if it is not covered by Part I, it is covered by Part IV as being a sum that they are obligated to pay "on account of a claim for breach of duty made against the insureds by reason of the occurrence of the negligent act, error or omission. . ."

Well, let me now set forth the language of the Landmark policy on the same subject. It is also found as part of the

same stipulation at Page 96. The Northwestern National was at Page 35.

In the Landmark policy we have only one paragraph under the heading "Insurance Agreement" — one paragraph at issue. That paragraph requires the insuror to pay on behalf of the insured "all sums which the insured shall become legally obligated to pay insofar as coverage is not afforded under the other provisions of the policy covering bodily injury, personal injury, or property damage liability on account of any claim for breach of duty made against the insured by reason of the occurrence of any negligent act, error or omission of the insured."

The language of the Landmark policy is, in my view, not very artfully worded or properly punctuated. However, I would construe that language in essence to be as follows:

The company will pay all sums that the insured shall become legally obligated to pay on account of any claim for breach of duty made against the insured by reason of the occurrence of any negligent act, error, or omission. However, this coverage is intended to supplement and be in addition to the other coverages provided in other provisions and parts of the policy for bodily injury, personal injury, or property damage.

Let me summarize where I am so far. The language of the sole operative paragraph in the Landmark policy is practically identical with the language in Part IV of the Northwestern policy, and I will consider it to be identical in scope for the purposes of today's motion. Both of those provisions say that the insurance company will pay for all sums that the insured are legally obligted to pay on account of the claim for breach of duty made against the insured by reason of any negligent act, error or omission of the insured.

Now, that is what the two policies are insofar as Part IV of Northwestern. The Northwestern policy has some additional language which I have already adverted to, language in Part I, which talks about obligations of the insured by reason of "the liability imposed by law."

Well, I apologize to you for such a long preliminary statement. I'm about to get to my tentative view of the merits, but before I do, it is my practice in a summary judgment motion to list all of the probative evidence I have. I'm going to do that in a moment.

Before I do that, we have mutual summary judgment motions, and insofar as the coverages of these policies is applied to the teachers' claims as adjudicated in the State Court, do all counsel agree that this case is right for decision today?

MR. LEAHY: Yes, your Honor.

THE COURT: Ms. Gold?

MS. GOLD: Yes, your Honor.

THE COURT: How about you?

MR. JONES: I agree, your Honor.

MR. ROSENZWEIG: I agree.

THE COURT: Thus today will in essence be the trial of the case and the decision of the case.

Now, let's get to the evidence which is before me. A major portion of it is in the stipulation of facts, a very thick document filed under date of October 4. I am not going to list everything that is included therein. It speaks for itself. We have some additional declarations. We have a declaration of Mr. Sykes that the defendants filed, and one of a Ms. Larson which they filed and a supplemental one of Ms. Larson.

The latter incorporates by reference some information about the college budget.

That's all the evidence, I believe.

Mr. Jones, did I miss anything?

MR. JONES: Your Honor, we also filed a copy of the budget.

THE COURT: Oh, yes, that is referred to in the second Larson declaration.

MR. JONES: Yes, your Honor.

THE COURT: Yes, but now I have covered it all, have I?

MR. JONES: Yes, your Honor.

THE COURT: How about it?

MR. LEAHY: Yes, your Honor.

MS. GOLD: Yes, your Honor.

THE COURT: Very well.

Now, in my view, getting down to and approaching the tentative decision, in my view there are no bona fide disputes of material fact — and I am relying on the word "material" — and I agree with counsel that the case is ripe for final decision today, and I accept that position.

Well, I proceed first to discuss the policy provision which is common to both policies, the errors and omissions language. The question is whether the claim asserted by the teachers and declared as binding on the District by the State Court decision is a "claim for breach of duty made against the District by reason of the occurrence of any negligent act, error or omission."

To get that question requires me to characterize the claim made by the teachers against the District as adjudicated and decided in the State Court system. I have to do that to see if that type of claim falls within the language I have just repeated. So let's talk about the nature of the teachers' claim.

Starting in perhaps January of 1981, the District and the Federation of Teachers were engaged in collective bargaining negotiations. The pattern of the collective bargaining agreement between the District and the Teachers Union already existed, prior agreements had existed, and the parties were talking about an extension or renewal of the collective bargaining agreement that they had or the negotiation of a new one to carry on after the expiration date of the one they had.

In any event, the teachers were demanding a wage increase, as I understand it. The District's fiscal year starts July 1 of each year. Apparently the collective bargaining agreement between the District and the teachers was also tied to a term that would commence July 1.

Am I right about that?

MR. JONES: We believe that is correct.

THE COURT: Very well. It may not be precisely important. That's my understanding. The bargaining for the

new contract that would be effective July 1, 1981 had started back in January of '81 but had not succeeded in achieving a new agreement by July 1, 1981. Nevertheless, the negotiations continued. No work stoppage is mentioned so I am assuming one did not occur, although that might not be relevant. And the bargaining finally succeeded and a new agreement was reached which was signed on March 9, 1982. But that new agreement covered the whole fiscal year starting on July 1, 1981. Thus there was a nine-month retroactive period covered by the new agreement. In the new agreement, the District was required to make the wage raise which the new agreement provided for retroactive to July 1, 1981. The obligation to pay retroactive wage increase for those nine months is the obligation which is in question in the present case.

It was that obligation which was also the subject of major litigation in the State Court system.

As I said, the trustees had obligated themselves by contract in the new agreement to pay that wage raise retroactively. They were for some reason inhibited from doing so because of a legal opinion which plainly originated in the office of the County Superintendent of Schools.

Is that right?

MR. JONES: Your Honor, I believe the opinion came from the Los Angeles County Counsel as solicited.

THE COURT: I just wasn't clear about that from the facts, but it was a legal opinion which in effect came through the County Superintendent because all the funds for the college district are channeled through the County Superintendent.

Is that not correct?

MR. ROSENZWEIG: Your Honor, just to make it clear, all paychecks for teachers within Los Angeles County have to actually be made out by the County Superintendent and then distributed by the District. So that is the reason that the County Superintendent became involved.

THE COURT: Very well. So the County Counsel — You think the County Counsel also, Mr. Rosenzweig —

MR. ROSENZWEIG: It was their opinion that —

THE COURT: The County Counsel authored that opinion.

MR. ROSENZWEIG: That's right.

THE COURT: The County Counsel, then, argued this legal opinion, and since the funds have to come through the County Superintendent, when the District asked for the necessary money to pay the retroactive wages, they were informed about this legal opinion, and the opinion was to the effect that the retroactive wage portion of the agreement was illegal under the California Constitution.

There is a provision in the California Constitution, which is Article XVI, Section 18, that prohibits local governmental bodies from incurring any liability exceeding in any year the revenue provided to them in such year.

That Constitutional provision and the argument about it and the final decision of the case, is all set forth in a published California opinion called Compton Community College Federation of Teachers versus Compton Community College District, found at 165 Cal.Ap.3d, Page 82, decided in 1985 and now final.

The Supreme Court was asked to take the case and declined.

Thus, it can be said that the essential issue in the motions before me today, insofar as the errors and omission language of the policies is concerned is this: Whether the obligation of the college board to pay those retroactive increases is an obligation which the board is legallly obligated to pay on account of a claim for breach of duty made against the board by reason of the occurrence of some negligent act, error or omission.

Now I'm ready to tell you my tentative decision on that. In my view, the obligation to pay the retroactive wage increase is not covered by the policy insofar as that errors and omission language is concerned. The obligation involved is not an obligation based on a claim for breach of duty by reason of the occurrence of any negligent act, error or omission of the District.

Now, to document that conclusion, obviously a court recognizes the general legal principle that the interpretation

of insurance contracts — in interpreting them one construes them against the drafter, the insurance company. But, of course, the Court must recognize, as the California court said in *Healy Tibbitts vs. Employers Surplus Line*, 72 Cal.Ap.3d 741, that a court must construe the language of an insurance policy giving to the words their plain and ordinary meaning and not giving them a strained construction to impose a liability which the insurance company couldn't reasonably be assumed to have accepted.

That philosophy is beneficial to a court in solving today's problem. In my view, the District knowingly and intelligently entered a contract. That contract may well have been the result of some poor and even negligent staff work or advice within the District given to the trustees before they signed the contract. It appears that some of the staff people caused the District to overestimate the revenues that the District would be getting in the fiscal year in question, and that there was a belief and a hope that the revenues would be adequate to fund this retroactive pay increase.

It also appears that some of the District advisers, trustees advisers, told the trustees their opinion that certain federal funds were available to pay this retroactive increase, whereas in fact they were not available and were earmarked for other purposes and unusable to pay the increase.

That's what happened, and the District is here in effect saying that the insurance company must pay under the policies because some of their people, the District's own people, internally gave them negligent advice or information in the process of the trustees deciding to sign this contract.

In my view, it simply defies good sense and logic. It defies good sense and logic to say that the insurance company must pay for that internal negligence, even it was negligence. Signing the contract was not a negligent act in and of itself. Signing the contract was not an error or omission of any agent of the District. Signing the contract was just a bad business judgment based on misinformation as to the revenues that would be available.

The whole problem, of course, was compounded by the legal opinion authored in the County Counsel's office, a legal opinion that turned out to be wrong.

In my opinion, any business or other institution that makes an improvident deal ought not to be able to turn to its insurance company under an errors and omissions policy and say, "You make good our losses. You pay the cost of our improvident deal."

There is no authority that has been cited to us that even remotely approaches that kind of a result.

There is another way of looking at this, which leads to the same result. One could admit that there was an error and omission, as those words are commonly defined, by some of the staff of the District in preparing the budget of the District, which budget the trustees were looking at when they signed the contract, but such an error and such an omission, even if they arguably occur, are not the cause, not the proximate cause of the liability which the District undertook.

The liability comes from the separate and conscious decision of the trustees to sign the contract.

The legal obligation that we are dealing with here is not only the legal obligation of this contract but is the basic, intrinsic obligation of a college district in carrying out its function. That can be done only by the hiring and paying of teachers.

Again, I think I am discussing the proximate causation. Whatever error and omission may have occurred in the process of the board's deciding to sign this contract was not the proximate cause, not the originating cause of the illegal obligation which the California Court said existed as a result of signing the contract.

There is still another way of looking at this problem which could constitute a separate and independent ground of decision. That is this: In my view, there is no loss within the meaning of the insurance policy here. In California, our Insurance Code defines insurance as a "contract whereby one party will indemnify another for a loss that the indemnity has suffered."

That's Insurance Code Section 22. In my view, there is no loss here because the District got exactly what it bargained for and at the price it agreed to pay. The District wanted to assure the continuance of its teaching staff. The cost, which was arrived at after the extensive bargaining and negotiations, was to pay them a higher wage and pay that higher wage retroactively.

I simply cannot see how that can be called a loss. It turns out that the District will have to pay for this retroactive insurance increase by charging the revenues of another fiscal year, since they overestimated their own revenues for the fiscal year in question, but the mere fact that they have to get the money from another year's revenue does not in my view make this a loss within the necessary concept of insurance.

I have now finished my tentative view on the errors and omission language which is common to both policies, and I want to proceed, even though the hour is late, to Part I of the Northwestern policy. The language there —

Counsel, I can see that I am not going to finish within 15 minutes. I have a meeting with Chief Judge Real at 1:15 which will probably last a half-hour. I hope I'm not imposing by asking you to return at 1:45.

MR. LEAHY: That's fine, your Honor.

THE COURT: I am sorry to cause you to do that, but in order for me to get any lunch and make the meeting, I think that is necessary, and the poor reporter has been going all morning with only five minutes of recess, so let's not cause her more hardship.

Very well. We will see you at 1:45.

(Luncheon recess from 12:00 to 1:45 p.m.)

THE COURT: Have seats, Counsel, in the matter that we were on at the time of the noontime recess.

Having finished by discussion of the tentative ruling under the errors and omissions language common to both policies, I now want to take up Part I of the Northwestern policy. As stated, the language is that the company will pay any sum which the insured becomes obligated to pay by reason of "the liability imposed by law."

The District and the Trustees make much of some language employed by the California Appellate Court in deciding the constitutional issue. During the expression of their decision and as a rationale for it, the California courts discussed the obligation of the college to employ teachers and to pay teachers. The California court was confronted by that California constitutional provision that I previously referred to. It dealt with local governments not incurring liabilities within the year exceeding the revenue available in such year. The California courts ended up holding that provision did not apply to the contract between the college and the teachers. The State Court said that the contract that the trustees signed was not the type of obligation referred to in the constitution and was exempt from the constitutional language. The rationale of the California Court was that the obligation assumed here, the contract with the teachers, was not a debt and — I'm quoting their language — "was not a debt voluntarily incurred by the District."

The court said that it was not such a debt because the District has a specific obligation to provide teachers and pay them. The California Court used the express language that the obligation incurred here by the District was an obligation imposed by law, but the context of that statement, the basis or the reason for making it and for so characterizing this contractual obligation is a totally different problem and a totally different matter than the interpretation to be given those same words in an insurance policy, like the one we are dealing with. In my view, the fortuitous or accidental use of those particular words by the California Court should not be considered as determinative of what this insurance contract means and whether this policy covers the present situation.

The only reason the California Courts were impelled to use that language, the words "imposed by law," was to distinguish this case for California constitutional law purposes from long line of other cases. The other case drew a line between municipal debts incurred under a specific mandate and those incurred in connection with or under some

discretionary manner of carrying out a general mandate.

The California Constitution is simply not construed as applying to debts incurred for carrying out a specific mandate.

In essence, the California Court, it seems to me, was simply construing the constitutional provision when they used these words and were not deciding insurance policy coverage. The language they employed should not be intepreted as covering a question of the kind before this Court. I believe that Part I can only be construed in logic and good sense as covering tort liability, either directly incurred by the District or where by the contract the District has agreed to assume the liability of another, such as some firm which contracts for the District or subcontractors of contractors — indemnity situations.

I don't believe Part I means or is meant to cover a contract obligation of this kind. These words "imposed by law," as used in the policy, are precautionary words put in there to make sure the insurance company is only required to pay tort liability or indemnity liability which the law recognizes.

If the law doesn't provide a remedy to the injured person against the District, then the insurance company doesn't have to pay that loss. If there is no legal remedy, the policy doesn't cover even though the action, some action by the District may have caused a loss of some kind to somebody.

I think there is language in a California decision that supports this construction of the policies, for example, that case of *International Surplus Lines vs. Devonshire Coverage Corporation,* 93 Cal.Ap.3d., 601, construes that same phrase, "liability imposed by law," and it specifically construes that phrase to mean torts or, as they say in the opinion, liability ex delicto, as distinguished from the contractual liability.

The liability that we are dealing with in our case is surely a contractual one and not a tort liability, and thus Part I, in my view, simply doesn't cover this liability. The defendants rely too much on the exact words of the State Court. It is not enough for the State Court to say for purposes of avoiding the constitutional clause that this is an obligation imposed by law. All contract obligations are imposed by law where we are dealing with a valid enforceable contract. These

insurance companies surely did not intend to take on themselves the performance of all contracts made by the District. the District, in effect, is asking them to do just that.

To summarize, then, I would find that there is no bona fide dispute of material fact; that on the issue of coverage, neither insurance company is obligated to indemnify the District.

Such a decision, if it is the final Court decision, would moot any problem between the two insurance companies and would not require me to try to find out when the obligation occurred.

Such a decision would also end in a claim by the District that the insurance company or companies must pay the District in case the teachers, in some supplemental State Court proceedings, get some of their attorneys' fees charged against the District.

I thought there was a hearing scheduled on that subject either soon or last week or sometime.

MR. ROSENZWEIG: The hearing is currently scheduled for November 19th.

THE COURT: It is going to be two weeks from now.

All right. If the companies are not obligated to pay the salary liability for the teachers, in my view, they are not obligated to pay the District for the attorneys' fees that teachers incurred in asserting that liability. Thus, as I see it, today's indicated decision, if adhered to, ends the entire case on all aspects, but if you do not agree, if counsel don't agree, I would like you to say so when your turn comes. I would normally take a recess to allow counsel to organize their thinking. I want to give each side at least 15 minutes to react to the indicated decision. The case is an important one, and the decision was lengthy. I can proceed to some of the 2:00 o'clock calendar and hear you again at 2:30 or thereabouts, or we can do it now.

What is your pleasure on that one, Mr. Jones? You are the indicated loser.

MR. JONES: I think I would like to have the 2:30, your Honor.

THE COURT: All right. If that's agreeable with the rest of you, you may retire. Come back at 2:30 or thereabouts and be sure the clerk sees you so that I can interrupt what is going on and hear the rest of this discussion.

MR. LEAHY: Thank you.

MR. JONES: Thank you.

(Recess)

AFTER RECESS

MR. ROSENZWEIG: Your Honor, as I'm neutral and have a meeting at 4:00 o'clock, I wonder if I might have the Court's permission to leave in mid-argument.

THE COURT: Yes, you can.

I was going to ask what happens to that future hearing that you have and the defense of the College's position in that hearing in light of this decision, if it becomes the final decision of the Court.

Do you want to tell me your views about that?

MR. ROSENZWEIG: I believe the Court's decision here has absolutely no effect on the motion for attorneys' fees in the State Court.

THE COURT: I would guess that it would not, but the question then becomes who is going to represent the college? Who represents them now in your motion?

MR. ROSENZWEIG: In that case, Mr. Jones represents the District and I presume he will continue to do so.

THE COURT: Very well.

You agree with that, Mr. Jones?

MR. JONES: Yes, your Honor.

I want to make sure I understand the basis of the Court's ruling in terms of the liability imposed by law. As I understand what the Court is saying is that the language "obligation by law" used in the State Court decision really had no meaning in terms of whether or not there was a contract or an obligation imposed by law with respect to the insurance—

THE COURT: I don't think I can add something to what I said.

MR. JONES: I'm not asking you to.

THE COURT: I said it as carefully as I could, while recognizing that it was not really as cogently put together as one would do it in writing an opinion, but I don't think I want to add to it.

MR. JONES: I wanted to make sure that is what the Court said.

THE COURT: The results you know.

MR. JONES: The result I know, your Honor, yes.

THE COURT: And it, in essence, is regardless of these words employed by the State Court in its opinion. They do not — they have little if persuasive effect on what this insurance policy means, even though the words are identical.

Go ahead.

MR. JONES: The questions of whether or not "liability imposed by law" with respect to this limitation provision means something different than liability imposed by law with respect to insurance agreements, I think that the decision of the State Court indicates that the same thing is meant, and I am going to attempt to demonstrate that to your Honor.

As you are aware, the constitutional provision says that no county, et cetera, shall incur any indebtedness or liability in any manner for any purpose. There was petition for rehearing at the Court of Appeal, and the issue presented to the Court of Appeal in that petition for rehearing was, would the decision of the Court of Appeals be the same if the Court of Appeal was made aware of an educational provision, and that provision was 72500 of the Code, and that section says — excuse me.

THE COURT: You can summarize it for me as you remember it without looking at the exact language, unless you think it is vital.

MR. JONES: I think it is vital. I found it here.

THE COURT: Go right ahead.

MR. JONES: The governing board —

THE COURT: This is the Education Code. What section?

MR. JONES: Section 72500.

THE COURT: Go ahead.

MR. JONES: It provides that the governing board of any community college is liable as such in the name of the district for all debts and contracts, including the salary due an instructor not paid in excess of the monies accrued to the District and useful for that purpose and useful for the purposes of debts and contracts during the school year for which the debt and contract are made. The district shall not be liable for debts and contracts made in violation of this section.

So the Education Code specifically excludes contracts where teachers' salaries in excess of incoming revenues available to the District in the year the contract is incurred, the obligation is incurred.

The petition for rehearing was granted on that ground, because the Court — because the Court —— as the Court appeared to rule, this was not a contractual obligation because there was specific statutory mandates that require the school district to pay this obligation without regard to that limitation provision.

Now, the debt limitation provision talks about debts, no matter how incurred, et cetera.

THE COURT: Now, what did the State Court do with that upon granting the rehearing?

MR. JONES: What the State Court did is they denied rehearing but took certain sections out of the opinion and added a footnote.

THE COURT: They didn't give you the rehearing, but they changed —

MR. JONES: Changed their opinion, yes, your Honor, and the footnote is Footnote 3, and it says:

> "The District cited Education Code Section 72500 as further — as a further debt limitation on the Board of Education."

Then it says:

> "The District cited Education Code Section 72500 as a further debt limitation on the Board of Education."

Then it says:

> "This section in part provides that the governing board of any community college district is liable for all debts

> and contracts, including the salary due any instructor not made in excess of the money approved to the District itself."

I basically restates the same thing.

Then the Court went on to say:

> "However, in Wright v. Compton Unified School District, this Court held this statutory provision merely restates the constitutional debt limitation and is not an independent limitation on the school board spending."

The result is that under both the constitution and the statute, the school district is liable for the obligation. So that brought directly before the Court the specific question, in my view: Is there something different — is this obligation something other than an obligation imposed by statute on the district?

Does the fact that the Legislature has said that a contract in excess of the income and revenues the district shall not be liable for, does that change the Court's view? So it brings directly to the Court whether or not this is a liability imposed by law in the sense that it is understood in the context of the independent agreement — and I will get to that in one second — or is this some special interpretation of the law that ignores the contract altogether?

And simply for the purposes of the debt limitation provision, we don't really look at the contract. The contract is brought directly before the Court. From there the Court says:

"This is a restatement of the constitution," which says to me, even though it is characterized as a contract — even though it is a contract, even though the Legislature said, "You don't have to pay the contract itself in excess of your income and revenues," nevertheless, the constitutional provision applies.

Then you look at the analysis on why it applies. To my recollection, virtually every one of the cases that has come before the Supreme Court has to do with the contract entered into by public agencies at one time or another, and where

there is not revenues, this contract is rendered void — the contract by the debt limitation provision.

If the courts appeared to say it is a contractual liability, that is, one voluntarily incurred, then the debt limitation provision precludes the payment. But if there is a specific statutory mandate or a statutory scheme or plan which takes outside of the contract and imposes a liability independent of the contract, then that limitation provision does not apply.

Now, under California law there are two ways that an obligation arises: Voluntarily incurred contracts or by statute — I'm sorry, by operation of law. Operation of law is a duty that is imposed on a person or member of the general public, but it is not voluntarily incurred.

If we move to what "liability imposed by law" in the context of the insurance contract has been, it always has been — insofar as the cases cited, it is a liability that is not voluntarily incurred. It is one that is imposed — a duty imposed upon the person or the entity outside of the contract and, furthermore, in some situations, you must have a contract in order for the duty to arise. But the duty in fact is not imposed by the contract.

For example, implied covenants, I think it is Insurance Code 790, et seq., which deals with unfair insurance practices.

First you must have insurance contract coverage. If you have coverage, the statute imposes additional duties. The covenant imposes additional duties.

THE COURT: Well, looking at this clause in this insurance policy, how would you have me define "obligations imposed by law" which the company has to pay for.

MR. JONES: In my view, it is the same characterization proffered by Northwestern. That is, the liability imposed by a tort.

Now, a duty can arise — the duty with respect to a tort, an obligation imposed by law, can arise by general law, by statute. I think I have given examples, but the point is — the critical point is, it is not an obligation voluntarily incurred. It is not a contract. It is a duty imposed upon the parties without regard for whether or not they agree to it. The State

Court ruled that this duty is imposed upon the school district without regard for any voluntary acts on your part. It has nothing to do with whether or not it was voluntarily undertaken. That is not the critical factor.

The contract is not the critical factor. The critical factor is that the statute cited by the Court of Appeal imposed an independent duty upon a school district to pay these obligations. Without that independent duty under the State Constitution, we would be —

THE COURT: Well, I am sorry to have to ask you, but try it again. What does "imposed by law" mean as used in this insurance policy?

MR. JONES: I think I should go to the cases.

THE COURT: Try to synthesize it for me, would you, in a sentence or two?

MR. JONES: That it is an obligation that you do not voluntarily incur. You don't voluntarily agree to — For example, if I have a contract with some person over here and my responsibility is under that contract, I can't ask an insurance company to assume that responsibility unless they say so in their contract.

THE COURT: That is what happened here, isn't it? Your trustees made a contract. They knew what they were doing. They made a voluntary contract, didn't they?

MR. JONES: They weren't held liable on the basis of the contract. They were held liable by the State Court on the basis of the obligation imposed by law.

THE COURT: The State Court said, "You are liable because you made an agreement," and then they said despite the opinion of the County Counsel, it is a valid agreement not allowed by the Constitution.

Isn't that what happened?

MR. JONES: That is not how I see the language.

The Court went through the analysis that has been used in earlier cases, and it said in the earlier cases — in each of those cases, I recall it was a contract. They had to do — the series included everything from burial contracts under the Government Code to provide a defense for a public official

who was sued on whether or not a contract to build a building — whether or not the District could be held to the contract because there wasn't revenue available to pay for this building in the year.

What the Court said was that if, in each of these cases, that liability was imposed by contract, then the debt limitation provision prevented payment, but to determine whether or not the liability was imposed by contract, in each case they looked at the statutes under which the agency acted.

It doesn't tell you specifically the factors they considered to be important.

The Court concluded, "This is a contract" —

THE COURT: Let me ask you a question, Mr. Jones. Suppose that your trustees in the year they entered this contract have plenty of money. Would the insurance company nevertheless be obligated to pay it?

MR. JONES: No, your Honor, because the only way the question could come up is if we didn't have the money.

THE COURT: It's the same contract, the same obligation. Why aren't they obligated to pay that under those facts?

MR. JONES: Because under those facts there would not be a — My problem is that from my point of view they would pay under those circumstances; that there would not be an inability to pay that would cause them to inquire of the insurance company.

THE COURT: I don't follow you. Is it the inability to pay that makes this particular one within this contract?

MR. JONES: No, what it does is that for them to refuse to pay when they have the money would be an intentional act for which insurance could not cover the loss.

THE COURT: Well, your 15 minutes are gone. You have spoken only about that special language in Northwestern's policy.

Do you want to be heard at all with respect to the other?

MR. JONES: Only briefly, your Honor.

THE COURT: The errors and omissions, which is common to both.

MR. JONES: Yes.

Each of the insured's agreements provide coverage for errors and omissions of the employees, not just for the District. Each of those contracts cover the employee himself, the administrator, the staff member, the officer.

Therefore, if there is an error or omission made by that employee that causes an injury, then that employee is covered, so we are not really — we are not really — we have got coverage with respect to the employee for the —

THE COURT: Let me ask you something else. It is hard to relive the past, but suppose all these facts had occurred as they did and the County Counsel had never come down to that. Without that opinion, you would have paid and you never would have thought of going to the insurance company.

MR. JONES: We would not have paid because the County Superintendent intervened.

THE COURT: But the County Superintendent had to intervene in the sense of originating the funds, as I understand the scheme. But suppose the County Superintendent just hadn't raised any question. Suppose the County Superintendent had said, "Okay. We made the deal. You have got to perform it. You may have to borrow against next year's revenues — I want you to know that — but go ahead and pay."

That would have been the end of it, wouldn't it?

MR. JONES: No, because the District money is deposited in the County treasury. Warrants are drawn against that money. In fact, the money was not there. The County couldn't have paid. They could not issue warrants when there were no funds in the account.

THE COURT: I now want to hear from the other side, and I want to hear from Northwestern, because most of this argument is directed at the special language.

MR. LEAHY: Yes, your Honor, I will try and be brief.

THE COURT: You tell me in a cogent sentence or two what you think Mr. Jones has said to me about those key words.

MR. LEAHY: What I understand Mr. Jones to have said, your Honor, is that the fact that the teachers violated or breached the contract, which is clear from the pleadings, is irrelevant, because the liability is one imposed by law, and I further understood —

THE COURT: The teachers breached the contract? Hold on. I don't know what you mean by the teachers breaching the contract.

MR. LEAHY: The District, pardon me. I understand him to have said that any liability not imposed by contract is, by operation of law, imposed by tort, and therefore under the Devonshire coverage case and under *Fireman's Fund vs. Turlock*, the policy applies.

That being the case, when I get my tax liability, which is the liability imposed by law, I would turn it over to my carrier, who under that theory would be obligated to pay. The simple fact of the matter is the Court was dealing with a breach of contract action which was defended by the District on a constitutional debt limitation.

THE COURT: The ground that the contract was illegal and therefore unenforceable.

MR. LEAHY: The Court, in talking of the liability imposed, made reference to the duty — for every liability there must have been a breach of duty. The duty upon the District was not to pay the teachers. The duty was for the citizens of the District to provide an education, and if the duty was breached, it was breached to the citizens.

The duty imposed the liability. The liability imposed by law, of which the Court of Appeals of the State of California was discussing, was not the liability to the teachers at all. They made it very clear in the collective bargaining process that one could breach an agreement with employees on may different bases, one being the contract.

THE COURT: I follow you. What you are saying is that the language was employed with respect to a totally different liability?

MR. LEAHY: Yes.

THE COURT: But even if it was imposed with respect to this liability, namely the one to perform the contract, you

are dealing with constitutional law and limitations as against what those same words mean in an insurance company.

MR. LEAHY: That's correct, your Honor, and even if one assumes for purposes of argument only that the Court was not discussing a contract action, it is clear under any analysis of the law that it was not discussing a tort obligation because the District's duty to its teachers did not arise through tort law.

Even assuming that it wasn't —

THE COURT: You now say those words as used in the insurance policy have reference to tort liability?

MR. LEAHY: That is correct.

One further issue which your Honor mentioned this morning in discussion about the errors and omission coverage is equally applicable to Part I of Northwestern's policy.

No loss has taken place. Therefore, no insurable event has taken place. That is the same whether you are discussing Part IV of the policy or Part I of the policy.

With regard to the errors and omissions coverage, your Honor is correct. This was not an errors and omissions case, and the coverage specifically states that the underlying claim must be for a negligent act, error or omission. The underlying claim in this case was for repudiation of the collective bargaining agreement which is the first line on the memorandum of points and authorities filed.

THE COURT: It makes no difference that the breach had to take place because of some staff negligence?

MR. LEAHY: No difference at all, and the California law on insurance coverage has made that clear on a number of different occasions.

THE COURT: Very well. Thank you.

You can be seated.

Do you want to be heard any further?

MS. GOLD: I don't think it is necessary.

THE COURT: The Court's tentative judgment is the judgment of the Court. The plaintiff's motion for summary judgment and that of Landmark on its counterclaim — cross-complaint —

MS. GOLD: Well, actually, Landmark has not moved — technically has not moved, but a a practical matter has moved.

THE COURT: In other words, I have no motion in front of me by Landmark which I can grant; is that correct?

MS. GOLD: That's correct.

THE COURT: But the rationale of this motion obviously applies to Landmark, and I'm sure Mr. Jones understands that and can agree with it.

MR. JONES: I understand it.

THE COURT: You would agree that implies to Landmark?

MR. JONES: I'm sorry, your Honor.

THE COURT:You agree it applies equally to Landmark? That if they bring such a motion tomorrow the results would be foreordained?

MR. JONES: Yes, your Honor.

THE COURT: Anyhow, the plaintiff's motion is granted. The defendants' motion is denied, because the defendants have not show entitlement as a matter of law as to both motions.

As previously stated, the Court finds that there is no bona fide dispute of material fact, and the case is ripe for decision.

I understand the transcript has already been ordered?

MR. LEAHY: Yes, your Honor.

THE COURT: I will prepare my own judgment in the matter. The transcript constitutes the findings of fact and conclusions of law, and a statement of my opinions, and I believe then that today's judgment ought to terminate the entire case.

Fither of you have any different views?

MR. LEAHY: Your Honor, I agree, but there are counter and cross-claims pending against my client by the District and the Board against Landmark.

THE COURT: Come to the podium. I didn't hear the last. I heard counter and cross-claims?

MR. LEAHY: Yes, your Honor, the District and the Board, if you will recall, brought a counterclaim against my

client and a cross-claim against Landmark for bad faith, breach of contract, et cetera, et al.

On behalf of Northwestern, my office had filed a motion to dismiss, which the Court took off calendar, feeling that the decision today could very well moot the issue. It is my understanding that Landmark has not filed any responsive pleadings.

THE COURT: Let's hold and talk about yours.

In my view — Mr. Jones, if you have a different view, you tell me.

In my view, this judgment would moot the question of bad faith and possible punitive damages, would it not? All issues in your counter or cross-complaint?

I held the company was not liable.

MR. JONES: You know, I'm almost prepared to answer that question in terms of Northwestern but not Landmark.

THE COURT: All right. I don't ask you for a definitive comment.

Analyze where we now stand — I'm addressing both you and counsel for Landmark — bring the necessary motions or other proceedings, if Mr. Jones will not agree with you, that are necessary to terminate the case totally. I therefore will be writing only a partial judgment.

MR. LEAHY: Yes, your Honor.

Do you want to set a date by which the motion should be filed?

THE COURT: No, I am not going to set a date, but I would urge you to file it within the next ten days, and let's see if we can't finish up by the middle of December, if not right after the first of the year.

MR. LEAHY: Yes, your Honor.

MS. GOLD: May I be heard for just a moment, your Honor? I would like to call the Court's attention to the fact that all of the parties have stipulated for the purposes of this motion that issues decided in this motion will control issues on the cross-claim and therefore I do believe it is moot.

THE COURT: Well, make a motion to that effect. It may be that Mr. Jones, when he looks at it, will agree with you.

MS. GOLD: We will do that.

THE COURT: If so, get a stipulated order in which he approves as to form, but, obviously, is not going to waive rights in the end.

MR. LEAHY: Yes.

THE COURT: Thank you. The papers were good and I appreciate it.

(Proceedings concluded.)

— — —

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND COMPLETE TRANSCRIPTION FROM THE STENOGRAPHIC RECORD OF THESE PROCEEDINGS.

Dated December 23, 1985.

WYNNE FORREST, CSR
Official Reporter

MK

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FILED
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CLERK, U.S. DISTRICT COURT
BY DEPUTY

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Attorneys for Plaintiff
NORTHWESTERN NATIONAL CASUALTY COMPANY

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

NORTHWESTERN NATIONAL CASUALTY COMPANY, Plaintiff, v. COMPTON COMMUNITY COLLEGE DISTRICT; BOARD OF TRUSTEES OF COMPTON COMMUNITY COLLEGE DISTRICT; ABEL B. SYKES, JR., PRESIDENT OF COMPTON COMMUNITY COLLEGE DISTRICT; STUART R. GOTHOLD, LOS ANGELES COUNTY SUPERINTENDENT OF SCHOOLS, COMPTON COMMUNITY COLLEGE FEDERATION OF TEACHERS, AFT LOCAL	CIVIL ACTION NO. 85 3531 IH STIPULATION RE ENTRY OF JUDGMENT

FILED
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CENTRAL DIST. OF CALIF.
BY DEPUTY

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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
NORTHWE

APPENDIX E

3486; AFL-CIO; and LANDMARK INSURANCE COMPANY,
Defendants.

It is hereby stipulated by and between plaintiff NORTHWESTERN NATIONAL CASUALTY COMPANY, and defendants COMPTON COMMUNITY COLLEGE DISTRICT FEDERATION OF TEACHERS, AFT LOCAL 3486; AFL-CIO; and LANDMARK INSURANCE COMPANY, through their counsel of record that:

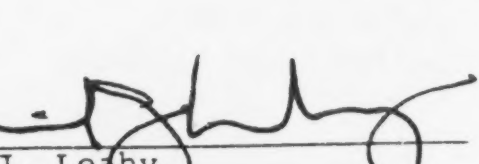
1. The court's ruling of November 4, 1985 rendered moot the claims of plaintiff against defendant Landmark Insurance Company.

2. That because no present controversy exists between plaintiff and defendant Landmark Insurance Company, the court may enter judgment in favor of defendant Landmark Insurance Company and against plaintiff, defendant Landmark Insurance Company to bear its own costs.

3. That should a reversal of the court's November 4, 1985 ruling occur in the future, that the parties agree that a present controversy between plaintiff and defendant Landmark Insurance Company would then exist; therefore, the parties stipulate that reversal of the court's November 4, 1985 ruling will operate as a reversal of the judgment entered pursuant to this stipulation and place the parties in the same position they were in prior to the court's ruling of November 4, 1985.

DATED: 11-11-85

Michael J. Leahy
Mary J. Ueki
HAIGHT, DICKSON, BROWN & BONESTEEL

BY: 
Michael J. Leahy
Attorneys for Plaintiff
NORTHWESTERN NATIONAL CASUALTY COMPANY

DATED: November 11, 1985

Judith Gold
LYNBERG & NELSON

BY: Judith Gold
Judith Gold
Attorneys for Defendant
LANDMARK INSURANCE COMPANY

DATED: November 11, 1985

Lawrence Rosenzweig

BY: Lawrence Rosenzweig
Lawrence Rosenzweig
Attorneys for Defendant
COMPTON COMMUNITY COLLEGE
DISTRICT FEDERATION OF TEACHERS,
AFT LOCAL 3486; AFL-CIO

Received
11-14-85

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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
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FILED
NOV - 7 1985
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

Attorneys for Compton Community College District and Board of Trustees of Compton Community College District

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
NORTHWESTE

NORTHWESTERN NATIONAL CASUALTY COMPANY, Plaintiff, vs. COMPTON COMMUNITY COLLEGE DISTRICT; BOARD OF TRUSTEES OF COMPTON COMMUNITY COLLEGE DISTRICT; LANDMARK INSURANCE COMPANY, Defendants.	CIVIL ACTION NO. 85-3531-IH STIPULATION OF COMPTON COMMUNITY COLLEGE DISTRICT AND BOARD OF TRUSTEES OF COMPTON COMMUNITY COLLEGE DISTRICT FOR ENTRY OF SUMMARY JUDGMENT UPON THE WHOLE CASE IN LIEU OF PARTIAL SUMMARY JUDGMENT

On November 4, 1985, the Honorable Irving Hill, Senior Judge of the United States District Court, Judge Presiding in Courtroom 2 of the above-captioned Court, after hearing announced its decision and findings of facts, conclusions of law, and statement of decision for partial summary judgment, granting the motion for summary judgment of plaintiff NORTHWESTERN NATIONAL CASUALTY COMPANY (hereinafter "Northwestern") on the complaint for declaratory judgment against defendants, counterclaimants and cross-claimants COMPTON COMMUNITY COLLEGE DISTRICT and BOARD OF TRUSTEES OF COMPTON

COMMUNITY COLLEGE DISTRICT (hereinafter also referred to collectively as the "District"), and denying the District's motion for summary judgment against Northwestern and defendant and counter-defendant LANDMARK INSURANCE COMPANY (hereinafter "Landmark"), declaring that as a matter of law neither the insurance policy of Northwestern nor the insurance policy of Landmark provides coverage to the District for the District's liability to the Compton Community College Federation of Teachers declared in the state court judgment (*Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d 82, 211 Cal.Rptr. 231).

Pursuant to written stipulation of the parties that the "Court's ruling on the complaint shall be binding on the parties as to any identical issues raised by way of the cross-claims or counter-claims" filed herein on or about October 4, 1985, and based on the district court's decision and ruling of no coverage as set forth in the district court's findings of fact, conclusions of law, and statement of decision, announced after hearing on November 4, 1985, the District hereby stipulates that said decision and ruling shall operate as summary judgment upon the whole case, including the District's counterclaims against Northwestern and cross-claims against Landmark, because coverage is necessary for the District to prevail on its counterclaims and cross-claims.

Wherefore, the District stipulates that the district court enter summary judgment upon the whole case, in lieu of partial summary judgment, in accordance with its decision as announced, and set forth in the district court's findings of fact, conclusions of law, and statement of decision announced after hearing on November 4, 1985, in favor of Northwestern and Landmark and against the District.

The District, by this Stipulation, expressly does not waive any right to appeal from judgment of the district court, and hereby expressly reserves the right to appeal from the judgment of the district court in the above-entitled action.

DATED: November 6, 1985.

JONES & MATSON
URREA C. JONES, JR.

By _____
URREA C. JONES, JR.

Attorneys for Compton Community College District, and Board of Trustees of Compton Community College District

It is so ordered.

Date: _____

CONSTITUTION OF THE STATE OF CALIFORNIA
ARTICLE XVI, SECTION 18

No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, except that with respect to any such public entity which is authorized to incur indebtedness for public school purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the purpose of repairing, reconstructing or replacing public school buildings determined, in the manner prescribed by law, to be structurally unsafe for school use, shall be adopted upon the approval of a majority of the qualified electors of the public entity voting on the proposition at such election; nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same; provided, however, anything to the contrary herein notwithstanding, when two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when two-thirds or a majority of the qualified electors, as the case may be, voting on any one of such propositions, vote in favor thereof, such proposition shall be deemed adopted.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11333 Iowa Avenue, Los Angeles, California 90025; that on February 23, 1987, I served the within *Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.W.
Washington, D.C. 20543
(Original and forty copies)

Lynberg & Nelson
888 South Figueroa Street
16th Floor
Los Angeles, California 90017

Haight, Dickson, Brown &
Bonesteel
201 Santa Monica Boulevard
Santa Monica, California 90406

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 23, 1987, at Los Angeles, California.

Joy Rivelli Miller
(Original signed)